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REGULATIONS  
OF THE  
DEPARTMENT OF THE INTERIOR  
CONCERNING  
RIGHTS OF WAY  
OVER INDIAN LANDS



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UNITED STATES  
GOVERNMENT PRINTING OFFICE  
WASHINGTON  
1929

## GENERAL STATEMENT

1. Except as hereinafter otherwise provided, no company or individual is authorized to survey, locate, or do any construction work upon Indian lands for right-of-way purposes until authority therefor has been obtained from the Secretary of the Interior. The superintendent or other officer in charge is expected to keep closely in touch with conditions within his jurisdiction and when any unauthorized entry upon Indian lands is made the individual or corporation responsible therefor should be immediately notified to cease operations until proper authority has been obtained. Full report of the facts and of the action taken should be made promptly by the superintendent or other officer in charge through the Commissioner of Indian Affairs, and if request to cease operations is not complied with, that fact should be reported by wire.

### APPLICATION TO SURVEY

2. Any company or individual desiring to obtain authority to survey or locate a right-of-way project upon Indian lands should file an application with the superintendent or other officer in charge of the lands involved, for transmission to the Secretary of the Interior through the Commissioner of Indian Affairs. Such application should (in as particular a manner as possible) describe the project in contemplation, and must be accompanied, in the case of a company or corporation, by—

First. A copy of its articles of incorporation, duly certified to by the proper officer of the company under its corporate seal or by the secretary of state where organized. If application is made by an unincorporated firm or association the facts should be stated therein.

Second. A copy of the State law under which the company was organized, with the certificate of the governor or secretary of the State that same is the existing law.

Third. When the law under which the application is filed directs that the articles of association or other papers connected with the organization be filed with any State officer, the certificate of such officer that the same have been filed according to law, with the date of the filing thereof.

Fourth. When a company is operating in a State other than that in which it is incorporated, the certificate of the proper officer of the State is required that it has complied with the laws of that State governing foreign corporations to the extent required to entitle the company to operate in such State.

Fifth. The official statement, under seal of the proper officer, that the organization has been completed; that the company is fully authorized to proceed with the construction of the project covered by the application according to existing law. (Form 1, p. 39.)

Sixth. An affidavit by the president, under the seal of the company, showing the names and designations of its officers at the date of the filing of the proofs. (Form 2, p. 39.)

Seventh. If certified copies of the existing laws regarding such corporations, and of new laws as passed from time to time, be forwarded to this office by the governor or secretary of any State, a company organized in such State may file, in lieu of the requirements of the second subdivision of this paragraph, a certificate of the governor or secretary of the State that no change has been made since a given date, not later than that of the laws last forwarded.

Eighth. Satisfactory evidence of the good faith of the company and its financial ability in the matter of the construction of the project covered by the application.

3. If the showing required under the first to fifth paragraph, inclusive, of section 2, has previously been filed in this department, a reference by the applicant to the date and place of such filing will be sufficient.

#### CONSTRUCTION PERMITS

4. Authority to proceed with construction work on a right-of-way project may be granted where the circumstances warrant such action at the same time or after permit to survey is issued and before full compliance is made with these regulations, provided the applicant deposits with the superintendent or other officer in charge of the Indian lands involved twice the estimated amount of damages to be carried by him as a "special deposit" until the actual damages are fixed and determined as herein provided, and agrees to make full and prompt compliance with all the requirements herein set forth. Application for such authority should be filed with the superintendent or other officer in charge, who will promptly notify the applicant of the deposit required and upon receipt thereof transmit the record with appropriate report and recommendation through the Commissioner of Indian Affairs.

#### RIGHT-OF-WAY APPLICATION

5. In due course, after survey has been authorized and completed, formal application for the desired right of way may be made. Such application should be addressed to the Secretary of the Interior and filed with the superintendent or other officer in charge of the Indian lands involved, except where hereinafter otherwise directed. Upon receipt of application the superintendent will note thereon the date of filing and promptly forward one part to the Commissioner of Indian Affairs, retaining the other part for use in preparing his final report.

#### MAPS OF LOCATION

6. Each application for grant of lands for right-of-way purposes should be accompanied by map of definite location, in duplicate, drawn on tracing linen, and by field notes of survey, also in duplicate. Two blue-print copies of such maps are also required.

7. A separate map should be filed for each section of 20 miles of right of way, but the last section may include any excess of 10 miles or less.

8. The scale of maps showing the line of route should be 2,000 feet to an inch. The maps may, however, be drawn to a larger scale when necessary, but the scale must not be so greatly increased as to make the map inconveniently large for handling. In most cases, by furnishing separate field notes an increase of scale can be avoided.

9. Field notes of the surveys should be written along the line on the map. If the map would thereby be too much crowded to be easily read, then duplicate field notes should be filed separate from the map, and in such form that they may be folded for filing. In such case it will be necessary to place on the map only a sufficient number of station numbers to make it convenient to follow the field notes of the map.

10. Typewritten field notes, with clear carbon copies, are preferred whenever separate field notes are necessary, as they expedite the examination of applications. The field notes, whether given on the map or filed separately, must be so complete that the line may be retraced from them on the ground. They should show whether lines were run on true or magnetic bearings, and in the latter case the variation of the needle and date of determination must be stated. One or more bearings (or angular connections with public survey lines) must be given. The 10-mile sections must be indicated and numbered on all lines of road submitted.

11. The termini of the line of route should be fixed, by reference of course and distance to the nearest existing corner of the public survey. The map, engineer's affidavit, and president's certificate (Forms 3 and 4) should each show these connections.

12. When either terminal of the line of route is upon unsurveyed land it must be connected by traverse with an established corner of the public survey, if not more than 6 miles distant from it, and the single bearing and distance from the terminal point to the corner computed and noted on the map, in the engineer's affidavit, and in the president's certificate. (Forms 3 and 4.) The notes and all data for the computation of the traverse must be given.

13. When the distance to an established corner of the public survey is more than 6 miles, this connection will be made with a natural object or a permanent monument which can be readily found and recognized, and which will fix and perpetuate the position of the terminal point. The map must show the position of such mark, and course and distance to the terminus. There must be given an accurate description of the mark and full data of the traverse, as required above. The engineer's affidavit and president's certificate (Forms 3 and 4) must state the connections. These monuments are of great importance.

14. Whenever the line of survey crosses a township or section line of the public survey, the distance to the nearest existing corner should be ascertained and noted. The map or plat should show these distances and the station numbers at the points of intersection. When field notes are submitted, they should also contain these distances and station numbers.

15. The engineer's affidavit and president's certificate must be written on the map, and must both designate by termini and length, in miles and decimals, the line of route for which right-of-way application is made. (See Forms 3 and 4.) No changes or additions are allowable in the substance of any forms, except when the essential facts differ from those assumed therein.

#### SHOWING TO ACCOMPANY MAP OF DEFINITE LOCATION

16. Each map of location must be accompanied by statement of the individual applicant or of the president or other principal officer of a company, defining the purpose, intent, and financial ability of the applicant in the matter of the construction of the project covered by the map.

#### SPECIAL REQUIREMENTS FOR RAILROAD MAPS

17. Where right of way is desired for spurs or short branch lines which will not greatly enlarge the size of the map, they may be shown on the same map with the main line, and should be separately described in the forms by termini and length. For longer lines separate maps should be filed. Grounds desired for station purposes may be indicated on the map of location of the road, but separate plats of such grounds must be filed and approved.

18. The maps should show any other road crossed, or with which connection is made, and, whenever possible, the station number on the survey thereof at the point of intersection. All such intersecting roads must be represented in ink of a different color from that used for the line for which the applicant asks right of way.

19. Plats of station grounds should be drawn on a scale of 400 feet to an inch, and must be filed separately from the line of route. Such plats should show enough of the line of route to indicate the position of the tract with reference thereto, and each station ground tract must be described and referenced as provided in section 11 hereof, except when on surveyed land, in which case the smallest legal subdivision in which the station ground tract is located, or to which it conforms, should be stated. (Forms 7 and 8.)

## SPECIAL PROVISIONS—RAILROADS

20. Applications for railroad rights of way and grounds for station purposes, etc., should be made under the provisions of the act of March 2, 1899 (30 Stat. L. 990), as amended by the act of June 21, 1906 (34 Stat. L. 325-330), and section 16 of the act of June 25, 1910 (36 Stat. L. 855-859). By section 6 of the act of March 2, 1899, applicants thereunder are required to conform to the provisions of section 2 of the act of March 3, 1875. (18 Stat. L. 482.) (For text of acts, see appendix.)

21. If the line of location of any proposed railroad be parallel to, and within 10 miles of, a railroad already constructed or in course of construction, it must be shown wherein the public interests will be promoted by the construction of the proposed road. Where the Interstate Commerce Commission has passed on this point a certified copy of the findings of such commission must be filed.

22. The company must certify (see Form 1) that the road is to be operated as a common carrier of passengers and freight.

23. The applicant must execute and file, in duplicate, stipulation (Form 9) regarding the prevention and extermination of forest fires, the construction and maintenance of passenger and freight stations for each town site established by the Government, and the crossing of the right of way applied for with canals, ditches, and other projects.

## BALLAST OR MATERIAL PITS, RESERVOIRS, ETC.

24. Railroad companies desiring to acquire Indian land for ballast or material pits, reservoirs, or for tree planting to aid in the construction or maintenance of railroads should make application therefor under the acts of March 3, 1909 (35 Stat. L. 781), if tribal lands are involved, and under the act cited as amended by the act of May 6, 1910 (36 Stat. L. 349), if allotted lands are affected.

25. Such applications should be filed with and acted upon by the superintendent or other officer in charge in conformity with the general regulations herein prescribed for right-of-way applications. In addition, the application should cite the act under which the right of way for the railroad to be served was granted and the date of such grant, and should be accompanied by stipulation required of applicants for railroad rights of way with the additional provision that upon abandonment of the lands covered by the grant or failure to use same for the purpose authorized for a continuous period of two years all rights of the company shall thereupon terminate. (Form 9.)

## RAILROADS IN OKLAHOMA

26. The act of March 2, 1899 (30 Stat. L. 990), was repealed so far as rights of way over Indian lands in Oklahoma are concerned by the act of February 28, 1902 (32 Stat. L. 43); and under the general provisions of the repealing act no application to the Secretary of the Interior is necessary, the only requirement, so far as this department is concerned, being the filing here of correct maps of any line of railroad proposed or any lands to be taken. Such maps must also be filed with the superintendent or other officer in charge of the lands involved and with the principal chief or governor of any tribe or nation through which the lines of railroad may be located or in which said lines are situated.

27. Before any railroad shall be constructed or any lands taken or condemned for any of the purposes set forth in section 14 of the act of February 28, 1902 (32 Stat. L. 43), full compensation for such right of way and all land taken and all damage done or to be done by the construction of the railroad, or the taking of any lands for railroad purposes, shall be made to the Indian owners, occupants, or allottees of such lands.

28. After the filing of maps as required by section 26 hereof terms of settlement may be taken up directly with the Indians in interest. In the event an amicable settlement with the Indians can not be reached, the amount of compensation and damages to be paid the Indians shall be fixed and determined through the courts, as provided in section 15 of the act.

29. While no authority to approve or disapprove any proceedings under the act of February 28, 1902, is vested in the department, under and by virtue of the general supervisory authority over Indian affairs vested in the Secretary of the Interior by sections 441 and 463 of the Revised Statutes, the superintendent or other officer in charge of the Indian lands involved is hereby charged with the duty of counseling and advising the Indians in interest as to the amount which in his opinion they should receive as compensation and damage for the desired lands or right of way. In the event that any settlement is arranged which in his opinion does not fairly compensate the Indians, or in the event court proceedings are instituted, the superintendent will promptly report all the facts through the Commissioner of Indian Affairs, so that appropriate action to safeguard the interests of the Indians may be taken.

#### SPECIAL PROVISIONS—OIL OR GAS PIPE LINES

30. Except as otherwise provided in the acts cited in this section, applications for oil or gas pipe line rights of way, and pumping-station or tank sites, should be made under the act of March 11, 1904 (33 Stat. L. 65), as amended by the act of March 2, 1917 (39 Stat. L. 967-973). Lateral lines may be of any diameter or length but in accordance with the provisions of the acts cited must be strictly limited to those extending from a main line establishing connection with oil or gas wells on individual allotments of citizens. Such lateral lines may be constructed without securing authority from the Secretary of the Interior and without filing maps of definite location when the consent of the allottees or other owners of the Indian lands involved has been obtained and satisfactory evidence thereof placed in the hands of the superintendent or other officer in charge. The owner of any such lateral line may independently undertake to secure the consent of the allottees or other owners of the Indian lands involved or may, if preferred, open negotiations therefor through the superintendent or other officer in charge. Grants under the acts cited are limited to a period of not to exceed twenty years. At the expiration of such period application for extension, if desired, for a further period of not exceeding 20 years must be filed with the superintendent or other officer in charge, who will assess and collect adequate damages, which should be not less than 10 cents per rod. Schedule of such assessment should be prepared and forwarded by the superintendent when the application for extension is submitted for the consideration of the department. From time to time as pipe-line grants expire it shall be the duty of the superintendent or other officer in charge to call the attention of the pipe-line owners to the requirements of this section.

31. To avoid loss to the Indians in the handling of oil or gas produced from their lands, the superintendent or other officer in charge is hereby authorized in his discretion to grant temporary permission for applicants for oil or gas pipe line rights of way to proceed at their own risk with the construction of such lines, provided they first deposit twice the amount of damages which the superintendent or other officer in charge estimates will result therefrom and also files written agreement to comply promptly with the requirements of the law and these regulations. Such permits shall be in writing and a copy of each such permit issued shall be promptly forwarded to the Commissioner of Indian Affairs to be filed with the record in the case. Deposits made hereunder shall be carried as "special deposits" until receipt of further instructions.

32. The size of the proposed pipe line should be designated in the application and on the map, and the engineer's affidavit and president's certificate (Forms 3 and 4) should show the size of the line.

33. Where additional right of way is required for the location of pumping stations or sites for receiving and distributing tanks, application therefor should be made in manner as herein provided for pipe lines, accompanied by a map showing the location of the right of way desired, with connecting line to the main pipe line. Applications for such additional right of way may be submitted separately or may be incorporated in the application concerning the main line, and shall be accompanied, in addition to the other papers required by these regulations, by a stipulation duly executed by the applicant, embodying the following provisions:

(a) To lay all connecting pipes at a sufficient depth as not to interfere with the cultivation of the land. Upon abandonment of the use of the premises to level all dikes, fireguards, and excavations and to remove all concrete masonry foundations, bases, and structural works so that the ground will be as nearly as practicable in the same condition as before its use for a pump-station site or site for tanks for the storage of oil.

(b) The use of the ground for such purposes shall not interfere with the allottee's right to remove any oil or gas deposits in the land, and the pump-station or tank-site grant shall always be subservient to an oil and gas mining lease on the land.

(c) The manner of construction shall be as provided by the regulations of the Secretary of the Interior.

(d) The grant shall be for a term of ----- years at a rental of \$----- per annum. (A definite term not exceeding 20 years and a definite yearly rental must be shown.)

34. Damages shall be assessed in each case so as to fully compensate the Indians for the damages sustained, and schedules of such assessment shall be prepared and submitted to the Secretary of the Interior for approval in accordance with the general instructions given in sections 71-84 hereof. When any subsequent damage is done by reason of any bursting of pipe or tank or by the entry of the pipe line or tank owner or of any of his employees upon the lands of the Indians, such damages shall be assessed and paid in the same manner.

35. All pipe lines shall be buried a sufficient depth under the surface as not to interfere with the cultivation of the land above, and at the risk of the company laying the same. Should it be desired at any time to lay additional lines of pipe in the same trench, or to replace the original line by either larger or smaller pipe, permission must be first obtained from the Secretary of the Interior, or from the superintendent or other officer in charge, and payment made of any damages sustained by the Indians in same manner as was required in connection with the original line. Any authority granted to any company or individual to lay such pipe lines is subject to the right of the full use and enjoyment of the premises by the tribe, nation, or individual owner, occupant, or allottee, except as otherwise provided by the law and these regulations.

36. Any applicant obtaining benefits under these regulations does so with the understanding that all claims for damages of whatever nature to any of the pipes or pipe lines, arising from the cultivation in the usual manner of the land lying above such pipes or pipe lines, are waived upon the part of the applicant.

37. Where such pipes or pipe lines are laid under a traveled road or highway, such construction shall be made in compliance with all laws of the State in which the lines are located relative to the manner of such construction, and if within an Indian reservation, during construction at least one-half in width of such road or highway shall be kept open to travel, and upon completion of construction the road shall be restored to its original condition, any excavation to be refilled whenever, by settling or other causes, the necessity may arise.

38. Whenever any such pipes or pipe lines are constructed across a ravine, canyon, or waterway, the same shall be laid either below the bed of such ravine, canyon, or waterway, or upon such suitable superstructure as will not cause obstructions.

39. The books and records of operators of pipe lines shall be open to the inspection of the Secretary of the Interior, or his accredited representatives, at all reasonable times, in order to obtain information which pertains in any way to oil produced or run from the lands under the supervision or jurisdiction of the Department of the Interior.

#### SPECIAL PROVISIONS—TELEPHONE OR TELEGRAPH LINES

40. Applications for rights of way for telephone or telegraph lines across Indian lands may be made under section 3 of the act of March 3, 1901 (31 Stat. L. 1058-1083), and if so made should conform to the general requirements herein set forth. Whenever grounds are required for office purposes, map thereof, in duplicate, drawn on tracing linen, to a scale of 50 feet to an inch must be filed separately from the line of route. Such maps should show enough of the line of route to indicate the position of the tract desired for office purposes with reference thereto and the location of such tract should be referenced on the maps by course and distance to the nearest existing corner of the public survey.

41. If preferred, applicants for rights of way for telephone or telegraph lines over Indian lands may proceed either under the act of February 15, 1901 (31 Stat. L. 790), or the act of March 4, 1911 (36 Stat. L. 1235-1253). These acts are administered through the General Land Office, and for the sake of uniformity of procedure applications thereunder involving Indian lands shall be filed in the local land office in accordance with separate regulations promulgated through that bureau.

42. Upon the filing of such an application in the local land office the register or other officer in charge, after appropriate notation, will forward same to the General Land Office, which bureau will in turn transmit to the Commissioner of Indian Affairs, with request for report, two copies of the application, or so much thereof as he may deem necessary for that purpose. No such application shall be presented to the Secretary of the Interior for approval unless accompanied by a statement of the views of the Commissioner of Indian Affairs.

#### SPECIAL PROVISIONS—POWER PROJECTS

43. Applications covering power projects, so far as allotted Indian lands are involved, should be made under the act of February 15, 1901 (31 Stat. L. 790), or the act of March 4, 1911 (36 Stat. L. 1235-1253), and should be filed in the local land office and handled administratively as in the case of telephone and telegraph lines. (See secs. 41 and 42 hereof.) Projects involving tribal lands should be covered in the same way, except where the power is generated by the use of hydroplants. In such cases a separate application covering the tribal lands must be filed with the Federal Power Commission under the Federal water power act of June 10, 1920 (41 Stat. L. 1063), and separate regulations promulgated by the Federal Power Commission.

#### SPECIAL PROVISIONS—IRRIGATION PROJECTS

44. Except as hereinafter provided, applicants for rights of way or easements for irrigation canals or ditches, flumes, reservoirs, etc., should proceed under sections 17 to 21, inclusive, of the act of March 3, 1891 (26 Stat. L. 1101), as amended, and separate regulations promulgated thereunder through the General Land Office. Administrative action on such applications after their receipt in the local land office shall be taken as set forth in sections 41 and 42 hereof.

45. Applications covering irrigation ditches involving Southern Ute Indian lands in Colorado should be filed with the superintendent or other officer in charge under the act of May 27, 1902 (32 Stat. L. 245-266), and should conform to the general requirements of these regulations.



46. The act of March 1, 1899 (30 Stat. L. 924-941), authorizes the Secretary of the Interior in his discretion to grant rights of way for the construction and maintenance of dams, ditches, and canals in or through the Uintah Indian Reservation in Utah for the purpose of diverting and appropriating the water of the streams in that reservation for useful purposes. The act of June 21, 1906 (34 Stat. L. 325-375), provides that ditches and canals of systems to irrigate the allotted lands of the Uncompahgre, Uintah, and Whiteriver Utes, in Utah, may be used, extended, or enlarged. Applications to secure the benefits of these acts should be filed with the superintendent or other officer in charge and should conform to the general requirements of these regulations.

47. Rights of way and water right applications affecting lands within the diminished portion of the Crow Indian Reservation for the purpose of irrigating lands on the ceded portion of such reservation should be filed with the superintendent or other officer in charge under the act of April 27, 1904 (33 Stat. L. 352), and should conform to the general requirements of these regulations.

#### MISCELLANEOUS WATER PROJECTS

48. Applications covering projects involving the transportation and use of water for beneficial purposes other than irrigation or power development should be filed in the local land office under the provisions of the act of February 15, 1901 (31 Stat. L. 790), following the procedure set forth in sections 41 and 42 hereof.

#### PUBLIC HIGHWAYS

49. Except where the Indian lands involved are situated in Nebraska or Montana, the Secretary of the Interior is authorized by section 4 of the act of March 3, 1901 (31 Stat. L. 1058-1084), to grant permission to the proper local or State authorities to open public highways in accordance with the laws of the State in which the Indian lands are situated.

50. To secure such permission, application must be filed through the superintendent, or other officer in charge, accompanied by map drawn in accordance with the general requirements of these regulations and all the information called for by form designated 5-104. See appendix, page 23.

51. Where the lands traversed have been surveyed, the proposed road or highway must follow section or allotment lines as far as practicable, and satisfactory showing must be made for any departure therefrom.

52. Damages shall be assessed in each case so as to fully compensate the Indians for the damages sustained, and schedules of such assessment shall be prepared and submitted to the Secretary of the Interior for approval in accordance with the general instructions given in sections 71-84 hereof. However, in making such assessments the superintendent or other officer in charge will keep in mind the public nature of the project and make due allowance for the benefit which will result to the Indian owners of the land crossed. These benefits should be pointed out to the Indians when the matter of damages is taken up with them, and in cases where no actual damages will result or where the damages are equaled or exceeded by the benefits the Indians should be counseled to give their consent to the opening of the road without asking for damages. Forms for the use of the superintendent in making his report and in securing statements from the Indians are designated 5-104a and 5-104b. (See appendix, pp. 24 and 25.)

## HIGHWAYS IN MONTANA AND NEBRASKA

53. The opening of public highways over Indian lands in Montana and Nebraska in accordance with the laws of the respective States is authorized by the act of March 4, 1915 (38 Stat. L. 1188.) No action by the Secretary of the Interior is required, but the act provides that notice of any proposed opening must be given to the superintendent or other officer in charge of the Indian lands involved and that before any such road is laid out map drawn on tracing linen showing definite location and width of the proposed road must be filed with and approved by the superintendent.

54. When a map is filed under the provisions of the preceding section the superintendent or other officer in charge has full authority to approve same in his discretion, but such officers will be expected before approving any map so filed to view the road location or otherwise satisfy himself that the road is a public necessity and is laid out where it will do the least damage to the property of the Indians, provided such a course is feasible and practicable from a construction viewpoint. No map showing a highway location detrimental to the best interests of the Indians or which will damage them beyond compensation should be approved.

55. The original part of maps approved under the preceding section shall be filed in the superintendent's office; and the other parts, if any, with approval noted thereon, shall be returned to the applicants.

## DRAINAGE PROJECTS

56. There is no general law authorizing the granting of drainage rights of way over Indian lands except allotted lands situated in Oklahoma. Under the act of July 19, 1912 (37 Stat. L. 194), and the act of March 27, 1914 (38 Stat. L. 310), as amended by the act of March 2, 1921 (41 Stat. L. 1204), applications for drainage rights of way and the approval of drainage assessments on Indian lands in Oklahoma shall be addressed to the Secretary of the Interior and signed by the commissioners of the county in which the drainage district is located and attested by the county clerk. If the drainage district is located in more than one county, the application shall be signed by the officers of all such counties. The application shall show that all the laws of the State of Oklahoma regarding the drainage of lands have been complied with and that where such laws provide for the service of notice upon the landowners, such notice as to the allotted Indian lands held under restriction has been served upon the superintendent or other officer of the Indian Service having jurisdiction over such lands.

Each application shall be accompanied by—

(a) A map in duplicate drawn on tracing linen showing the definite location of the proposed drainage ditch or ditches and all lands intended to be drained thereby. Such map shall also show the definite location of the Indian allotments involved, with the name and number of the allottees. The map must also bear an affidavit by the engineer and a certificate of the drainage or county commissioners, forms for which are appended designated Form No. 10 and Form No. 11. As to scale, field notes, and other required data, see the general provisions of these regulations.

(b) A certified copy of the report of the viewers, including the schedule of assessments and damages as fixed by them.

57. The application and accompanying papers shall be filed with the superintendent or other officer of the Indian Service in charge of the Indian lands, who shall prepare a separate schedule similar to that made by the viewers, which separate schedule shall cover only the restricted Indian allotments involved and shall show by columns the name of the allottee, the allotment number, description of the land by smallest legal subdivisions, acreage of each legal subdivision, the net acreage of each legal subdivision liable for assessment, the rate per

acre of assessment, the class in which placed by the viewers, total assessment per each legal subdivision, number of acres in canal right of way, assessed damages therefor, and acreage in railroad or other rights of way. Pending preparation of such separate schedule the superintendent or officer in charge will submit a preliminary report to the Commissioner of Indian Affairs stating that application has been filed and giving a description of the project, with his opinion as to the feasibility and necessity so far as the Indians in interest are concerned; also giving the name of any employee under his supervision who has a knowledge of the subject of drainage and is qualified to determine the feasibility of the project and whether the assessment of benefits and damages has been equitably and fairly made. If the facts reported warrant such action, some qualified person will be designated to act with the superintendent or other officer in charge for the purpose of determining these points, and their findings and recommendations should be embodied in a joint report, which should be appended to the schedule heretofore prepared by the superintendent.

58. When completed as required by the preceding section, the schedule, together with the application, map, and accompanying papers, should be forwarded by the superintendent, with his report and recommendation, to the Commissioner of Indian Affairs for further appropriate action.

59. If the application and map are approved authority will be granted for the applicant to proceed with the construction of the ditch.

#### PAYMENT OF DRAINAGE ASSESSMENTS

60. It is to be distinctly understood that the approval of any assessment, except where the allotments involved are of the Five Civilized Tribes, is not to be taken as an indication that the department will assist in the collection of such assessment, and also that the provisions in the third paragraph of section 3 of the act of July 19, 1912 (37 Stat. L. 194), that unpaid assessments shall become a first lien on the allotments, are not applicable to projects approved by the Secretary of the Interior under the general provisions of the act.

61. Upon completion of any authorized project involving allotments of the Five Civilized Tribes, the superintendent or other officer in charge will report whether the Indian lands are being satisfactorily drained; if so, such officer will be authorized to pay the approved assessment in each case out of the pro rata share of each respective allottee in any funds or moneys arising from any source under such officer's control or under the control of the United States.

62. In every case where the superintendent is of opinion that the assessments should be paid and funds therefor are available, the matter should be taken up with and fully explained to each Indian owner, and every effort made to procure his or her written consent to such payment. Such consents or a full statement in lieu thereof should be submitted when authority to make payment is requested.

#### LOGGING ROADS

63. There is no specific authority of law for granting rights of way for logging roads over Indian lands. Permission revocable in the discretion of the Secretary of the Interior may be given to construct and operate such roads under the general supervisory authority over Indian affairs conferred by sections 441 and 463 of the Revised Statutes upon such terms and conditions as may be deemed fair and adequate under the circumstances of each particular case.

64. No timber contractor shall be permitted to lay out and construct any logging road without having previously submitted a statement of the proposed location to the superintendent or other officer in charge of the Indian lands involved and received the approval of the forest officer and the superintendent as to such proposed location, and the approval of the Commissioner of Indian Affairs as to the location of any main line logging railroad.

65. Before construction of any main-line logging road is undertaken, formal application must be filed through the superintendent, and approved by the Commissioner of Indian Affairs, accompanied by tracing map in duplicate. Short branches of logging roads, of a temporary nature, may be constructed with the approval of the superintendent and the forest officer without reference to the Commissioner of Indian Affairs. However, the location of such branches or spurs should be indicated on small maps or plats which shall be forwarded through the superintendent for filing in the Office of Indian Affairs.

66. In forwarding logging road applications the superintendent shall attach thereto schedule of damages prepared in accordance with the general instructions hereinafter given regarding the assessment of right of way damages.

#### MISCELLANEOUS

67. Where rights of way over Indian lands are desired for purposes not hereinbefore mentioned, revocable permits may be granted as in the case of logging roads. As to allotted lands needed for any project, conveyances may be made under the land sale act of June 25, 1910 (36 Stat. L. 855), or business leases may be obtained under the act of June 7, 1897 (30 Stat. L. 85), or June 25, 1910 (36 Stat. L. 856). For the proper procedure in such cases, the regulations under the respective acts cited should be consulted.

#### CONDEMNATION OF ALLOTTED LANDS

68. The condemnation of allotted Indian lands for any public purpose in accordance with the laws of the State wherein the lands are situated is authorized by the last paragraph of section 3 of the act of March 3, 1901 (31 Stat. L. 1058-1083-1084).

69. Any project for which private lands could be condemned under State laws is held to be a public purpose within the meaning of the act of March 3, 1901, above cited.

70. The superintendent or other officer in charge is expected to keep in close touch with matters affecting the interests of the Indians within his jurisdiction and to report immediately through the Commissioner of Indian Affairs when any condemnation proceedings are instituted. All information available regarding such proceedings, particularly a description of the lands involved, should be given so that the Department of Justice may be requested to enter an appearance in such proceedings in behalf of the owners and to take such other action for their protection as may be warranted by the law and the facts.

#### COMPENSATION AND DAMAGES

71. Except as provided in section 30 hereof no applicant should independently attempt to negotiate for a right of way with or pay any money therefor direct to any tribe of Indians or the owner of any restricted Indian allotment. Credit for payments made in disregard of this section will not be given.

72. The superintendent or other officer in charge of the Indian lands involved by any project is hereby designated as the proper person to appraise the value of the lands to be taken and the damage which will result therefrom, which appraisal shall be subject to the approval of the Secretary of the Interior. Where it is deemed advisable for the appraising officer to have the assistance of an expert in the technical features of any project, a supervising engineer or other qualified employee may be specially detailed for that purpose.

73. In any case involving or affecting the water rights of the Indians, where no special detail is made as provided for in the preceding section, the appraisal report of the superintendent should be forwarded to the Commissioner of Indian Affairs through the supervising engineer for the district in which the lands are situated, and it shall be the duty of such super-

vising engineer to forward same promptly, with a full statement of his views regarding the adequacy of the appraisal and setting forth what conditions, if any, in addition to those recommended by the superintendent should be imposed upon the applicant in order properly to safeguard the water rights of the Indians.

74. Approval will not be given to any railroad project involving Indian lands underlaid with coal or other valuable minerals unless the applicant makes payment of the estimated value of such deposits; and no project of any kind involving tribal lands valuable for power development will be approved unless it be satisfactorily shown that the value or use of the lands for such purpose will not be materially diminished or interfered with, or unless the project covered by the application is relocated so as to avoid interference with power development. To the end that this provision may be carried out, no such application shall be presented to the Secretary of the Interior for final action unless accompanied by report of the Geological Survey regarding the mineral and power value of the lands involved.

75. Whenever application is made under these regulations covering a project involving the use of irrigable Indian lands within an authorized or constructed irrigation project the assessment of damages made in accordance with sections 71-84 hereof shall include as a separate item the prorated per acre construction and betterment charge laid against the lands by reason of such irrigation project, the amount so paid to be credited to the fund or appropriation from which the irrigation project was constructed. If such charge has not been fixed or determined, the applicant shall be required to make deposit of the estimated amount thereof as a guarantee that it will comply with this section. Such deposit shall be taken up by the superintendent or other officer in charge as a "special deposit" and so carried until otherwise directed.

76. Unless there are good reasons to the contrary, in which event immediate report should be made to the Commissioner of Indian Affairs, the superintendent will, upon receipt of a right-of-way application (or of a copy thereof where the filing of the original is required to be made in the local land office or the Federal Power Commission), promptly proceed with the preparation of two schedules, each in quadruplicate, one covering the tribal and the other the allotted lands involved. The allotted-land schedule in addition to listing the lands should show the name and number of each allottee. Blank columns should be provided in each schedule for the insertion when ascertained of the acreage taken from each subdivision, the value per acre, the damage to improvements, adjoining land or other property, and the total of these items. (See appendix for schedule forms.)

77. While schedules are being prepared in accordance with the preceding section, the superintendent will, except in the case of public highways or other Government projects to which this section shall not apply, estimate the cost or expense of the necessary field inspection and other work required in making appraisal of damages, which estimate shall include actual subsistence, traveling expenses, and per diem, if any, of the employee doing the field work. The applicant will then be called upon to make deposit with the superintendent of such estimated amount, which shall be immediately available for the payment of such expenses.

78. On receipt of the deposit required under the preceding section the superintendent shall go over the project and appraise the value of the land taken and damage done which data should be inserted in the schedules. Section 9 (e) of the Federal water power act provides that when licenses are issued involving the use of tribal Indian lands the commission shall fix a reasonable charge for the use thereof, and that such charges may be readjusted at the end of 20 years after the beginning of operations and at periods of not less than 10 years thereafter in a manner to be described in each license. So far as transmission lines are concerned, the commission has fixed \$5 per annum per mile as the charge to be exacted. On other projects the annual charge usually fixed by the commission is 6 per cent of the fair valuation of the

lands involved. Unless good reasons exist for using higher rates, in which event the facts should be fully set out in report accompanying the schedule, appraisements made under these regulations covering power projects should conform to the rates fixed by the Federal Power Commission. Assessments for oil or gas pipeline should not be less than 25 cents per rod, and for telephone or telegraph lines not less than 10 cents per pole should be assessed. Whatever rate is used, the total assessment in favor of any allottee should not be less than \$1. Except for power projects on tribal lands, all assessments shall be made on a lump-sum basis.

79. At the time of making the appraisalment, or upon its completion, the question of compensation and damages should be taken up with and thoroughly explained to the individual Indians in interest, and if they are agreeable their written acceptance of the awards made by the superintendent, either by affixing their signatures to the schedule or by separate statement, should be procured. If any Indian objects to the appraisalment and demands a greater payment, if such demand is considered reasonable by the superintendent he should revise his appraisalment accordingly; otherwise, the written statement of the Indian should be forwarded with the schedule, with a full statement of the superintendent's views. Where tribal lands are involved, all railroad and other right-of-way applications of more than ordinary importance should be presented to the tribe in general council assembled. A record of the proceedings should be kept and a duly authenticated copy of such minutes should be attached to the schedule. Except in the case of railroads the approval of the Secretary of the Interior may be given in his discretion, even though no amicable settlement has been reached with the Indians. However, it is required that every effort be made to bring about an amicable agreement whenever reasonably possible.

80. The Federal Power Commission is authorized to fix and collect the annual charge laid against any water-power project involving tribal Indian lands. Accordingly, no deposit is required in such cases, and schedule showing assessment of damages should be forwarded here immediately upon completion. In all other cases on completion of the schedules one part thereof shall be forwarded to the applicant for examination, with request that it be returned accompanied by deposit of the total award, if such deposit has not theretofore been made, or with a statement of objection, if any. The deposit, if made, should be carried by the superintendent as a "special deposit" until receipt through the Commissioner of Indian Affairs of further instructions regarding its disposition. The amount so deposited should be reported by the superintendent when the schedule of damages is forwarded here. (See certificate appended to schedule Forms 12 and 13.)

81. In the case of railroads, except those involving lands in Oklahoma, the names of individual Indians who refuse to accept the awards made by the superintendent and whose demands the applicant is unwilling to meet should be eliminated from schedule prepared under section 76 hereof and placed upon a separate schedule designated "Schedule of dissenting allottees." This schedule should be prepared in quadruplicate and should be forwarded by the superintendent with full report, giving the names and addresses of three disinterested persons who are competent and willing to serve as referees in the matter. At least one of the nominees should be named by, or satisfactory to, the railroad company desiring the right of way. The qualifications of the persons so nominated should be set out in the superintendent's report; and upon their appointment by the Secretary of the Interior they shall take and subscribe before competent authority an oath that they will faithfully and impartially discharge the duties of their appointment, which oath, duly certified, shall be returned with their award to the Secretary of the Interior. If the referees can not agree, then any two of them are authorized to make the award. Each of the referees shall receive for his compensation the sum of \$4 per day while engaged in the hearing of any case submitted to them under this act. Witnesses shall

receive the fees usually paid by courts within the district where such land is located. Costs, including compensation of the referees, shall be made a part of the award of judgment and tried de novo, and the judgment for damages rendered by the court shall be final and conclusive. When proceedings are thus commenced in court, the railroad company shall deposit the amount of the award made by the referees with the court to abide the judgment thereof, and then have the right to enter upon property sought to be condemned and proceed with the construction of the railway.

83. In due course the superintendent will transmit schedules of damages, reporting the amount deposited by the applicant and recommending the action which should be taken. In addition, the superintendent's report should give the information indicated by the following:

(a) In the case of allotted lands, are such lands listed for sale? If so, give date on which bids have been or will be opened.

(b) Does the location of the right of way sought conflict with any rights of way previously granted, and will the granting of the right of way interfere with the proper use of such previously granted rights of way or the works constructed thereon?

(c) Will the interests of the Indians be benefitted or adversely affected by the granting of the right of way, and are any damages likely to occur which could not be compensated by the payment of money?

(d) In the case of a railroad right of way, is such right of way located on lands valuable for power site or irrigation purposes, and will the construction of the proposed railroad along the right of way interfere with the development of adjacent waterways for power or irrigation? If so, are the physical conditions such that the right of way can be relocated so as to lie above possible reservoir and dam sites? If such relocation is impossible on account of physical conditions, would the lands be considered more valuable for power and irrigation purposes than for a railroad right of way?

84. If any allotted lands involved should be sold or listed for sale, or if other adverse rights or interests should accrue on either allotted or unallotted lands before the officer in charge is notified of approval of map showing definite location of the right of way sought, such officer will at once make a special report, calling attention to the fact that application for right of way is pending.

#### APPROVAL OF APPLICATION

85. Upon satisfactory compliance with these regulations and such additional requirements as the Secretary of the Interior may from time to time see fit to impose, approval will be given to each application, map, and schedule of damages submitted hereunder and thereupon construction work may proceed.

#### DISPOSITION OF MAPS

86. Except as provided in section 55 the original part of each map of location approved hereunder covering allotted or tribal lands of the Osage Nation or of the Five Civilized Tribes, Oklahoma, shall be placed in the permanent files of the Bureau of Indian Affairs and the duplicate shall be transmitted to the superintendent or other officer in charge for filing in the agency office. The original part of all other approved maps shall be transmitted to the General Land Office for notation upon the records of that bureau and filing in its permanent files, and the duplicate part shall be placed in the permanent files of the Bureau of Indian Affairs. If any applicant

desires to be furnished with one or more parts of original map with approval of the Secretary of the Interior indorsed thereon, the necessary maps, in addition to those required by these regulations, should be submitted with the application.

#### COMPLETION OF PROJECT

87. When the construction of any railroad, oil or gas pipe line, or telegraph or telephone line authorized hereunder is completed, an affidavit, in duplicate, of the engineer and a certificate, in duplicate, of the owner (the president in case of a company) must be filed in the Office of Indian Affairs. (Forms 5 and 6.)

#### CHANGE OF LOCATION

88. In connection with any project authorized hereunder, if a change from the route or location indicated upon the approved maps is found to be necessary, on account of engineering difficulties or otherwise, new maps and field notes of the changed route or location must be filed and approved, and a right of way upon such changed lines must be acquired, damages ascertained, and compensation paid on account thereof, in all respects as in the case of the original location, before construction work can be proceeded with upon such changed lines.

#### FORFEITURE

89. Section 4 of the act of March 2, 1899 (30 Stat. L. 990), is not construed as authorizing the Secretary of the Interior to declare a forfeiture of rights of way granted thereunder, but any such forfeiture to be effective must be based upon a finding, either by Congress or the courts, of noncompliance with the provisions of such section.

#### APPLICATION BY OTHER THAN CORPORATIONS

90. The foregoing regulations shall be observed, so far as applicable, by any individual, firm, or partnership, or unincorporated association, seeking to procure a right of way across Indian lands, with special emphasis on the provisions requiring a satisfactory showing as to the purpose, intent, and financial ability of the applicant. In addition, copy of articles of partnership or association, duly certified, must be filed; and if there be none, the fact must be stated over the signature of each member of the partnership or association.

#### LANDS OF THE PUEBLO INDIANS OF NEW MEXICO

91. The act of Congress approved April 21, 1928 (Public No. 296), extends and makes applicable to the Pueblo Indians of New Mexico and their lands, under such rules, regulations, and conditions as the Secretary of the Interior may prescribe, the provisions of the Statutes of the United States governing the acquisition of rights of way through Indian lands—to wit, the Code of Laws of the United States of America, in force December 6, 1926, title 25, "Indians," sections 311, 312, 313, 314, 315, 317, 318, 319, and 321; and title 43, "Public lands," section 935; and the basic acts of Congress cited in such sections.

In the code sections enumerated above the following acts of Congress are cited:

Section 4 of the act of March 3, 1901 (31 Stat. L. 1058-1084), as to public highways; section 2 of the act of March 3, 1875 (18 Stat. L. 482), and act of March 2, 1899 (30 Stat. L. 990), as amended by section 23 of the act of February 28, 1902 (32 Stat. L. 43-50), the act of June 21, 1906 (34 Stat. L. 325-330) and section 16 of the act of June 25, 1910 (36 Stat. L. 855-859), as



to railroads; section 3 of the act of March 3, 1901 (31 Stat. L. 1058-1083), as to telephone and telegraph lines; and the act of March 11, 1904 (33 Stat. L. 65), as amended by the act of March 2, 1917 (39 Stat. L. 969-973), as to oil and gas pipe lines.

So much of the foregoing regulations as are issued under the acts cited in the preceding paragraph are hereby adopted as the regulations authorized to be approved by the Secretary of the Interior by the act of April 21, 1928 (Public No. 296). (For text of acts see appendix.)

PREVIOUS REGULATIONS SUPERSEDED

92. These regulations supersede all previous regulations promulgated under the several acts herein cited.

RIGHT TO AMEND, ALTER, OR APPEAL

93. The right of the Secretary of the Interior at any time to amend, alter, or repeal these regulations is hereby expressly reserved; and if in the administration of the acts herein-cited cases are found which are not covered by these regulations, such cases will be disposed of according to their respective merits under special instructions, or supplemental regulations embracing cases of that character will be adopted as may seem necessary.

DEPARTMENT OF THE INTERIOR,  
BUREAU OF INDIAN AFFAIRS,  
May 19, 1928.

Respectfully submitted.

E. B. MERITT,  
*Assistant Commissioner.*

Approved May 22, 1928.

JOHN H. EDWARDS,  
*Assistant Secretary.*